

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES EDWARD GRANT,

Plaintiff,

v.

TRENTON SCHAEFER,

Defendant.

ORDER

08-cv-672-slc

Plaintiff was granted leave to proceed in this action on February 3, 2009. On February 27, 2009, defendant answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a document titled "Response to Attorney's Answer on behalf of Defendant Trenton Schaefer," in which he replies to factual statements made in the answer.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendant. Although defendant Schaefer has raised certain affirmative defenses in his answer he has not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendant Schaefer's answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(b)(6) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendant's answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to defendant's answer (Dkt. #24) will be placed in the court's file but will not be considered.

Entered this 26th day of March, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge